

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)	COMPLAINT
)	
)	
TRACY L. NEILY (a/k/a Tracy Atwell) AND)	FILE NO. 12041
PROFESSIONAL PLANNING)	
OF EASLEY, LLC.,)	
)	
)	
RESPONDENTS)	

NOTICE: EACH RESPONDENT HAS 30 DAYS TO REQUEST A HEARING.
 EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER.

The Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division") alleges that Tracy L. Neily and Professional Planning of Easley, LLC, (collectively referred to as the "Respondents" and individually as a "Respondent") have engaged in acts, practices, and transactions which violate the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101 et seq. (Supp. 2011) (the "Act") as set forth herein.

JURISDICTION

1. The Securities Commissioner of the State of South Carolina ("Commissioner") has jurisdiction over this matter pursuant to S.C. Code Ann. § 35-1-601(a).

RESPONDENTS

2. Respondent Professional Planning of Easley, LLC ("PPE"), at the time of the transactions herein, was a South Carolina limited liability company with its principal place of business in Easley, South Carolina.

3. At the time of the transactions herein, Respondent Tracy L. Neily ("Neily") was the President, registered agent, and principal control person of PPE.
4. Both Neily and PPE have a last known address of 105-B Franklin Square Way, Easley, South Carolina 29642.

ACTIVITY

5. This administrative action arises as a result of actions taken by the above-named Respondents, as well as other persons, in connection with a long-running Ponzi scheme operated in and from the Easley, South Carolina area.
6. At the center of the Ponzi scheme was Atlantic Bullion & Coin, Inc. ("AB&C"), a South Carolina corporation controlled by Ronnie Gene Wilson ("Wilson").
7. The Respondents, acting jointly, severally, and in concert with Wilson and AB&C, offered persons both in this State and elsewhere the opportunity to invest in silver (the "Investment") and earn a return with no active participation or decision-making required by any individual investor.
8. Monies given by persons choosing to invest with Respondents, Wilson, and AB&C (collectively, the "Promoters") were commingled.
9. The fortunes of the persons choosing to invest with the Promoters (collectively referred to as the "Investors" and individually as an "Investor"), further, were interwoven with and dependent upon the efforts and success of the Promoters.
10. The Investment that the Promoters, including Respondents, offered to Investors constitutes a "security" under South Carolina law.

11. The Promoters' offers and sales of the Investment were made in this State by means of offers from this State to residents of this State and of other States.¹
12. It is unlawful to offer or sell a security in this State unless the security is registered, exempt from registration, or is a federal covered security.
13. The Investment the Promoters, including Respondents, offered and sold was not registered with the Division, either prior to or at any time following its offer and sale in this State.
14. The Investment the Promoters, including Respondents, offered and sold has not been the subject of any notice that was filed as to any exempt or federal covered status.
15. All persons offering and/or selling securities in this State are required to be registered with the Division as broker-dealers or agents or exempt from registration prior to their offer or sale of a security in this State.
16. The Promoters, including Respondents, weren't registered with the Division as broker-dealers or agents prior to their offers and sales of the Investment in this State, and no exemption was filed on their behalf.
17. Neither Respondent Neily, nor Respondent PPE, disclosed to Investors that the Investment was not registered for sale in this State, and neither disclosed to Investors that they were not registered to sell the Investment in this State.
18. Respondent Neily, both on her own behalf and on behalf of Respondent PPE, made presentations to prospective Investors at seminars coordinated or hosted by Respondents and/or Wilson and AB&C.

¹ Pursuant to the Act, offers to sell securities are made "in this State" whether or not either party is then physically present in this State, if the offer (1) originates from within this State; or (2) is directed by the offerer to a place in this State and received at the place to which it is directed. See S.C. Code Ann. § 35-1-610 (c).

19. Neily and PPE also made sales presentations to prospective Investors in individual settings, both inside and out of PPE and Neily's business location.
20. In connection with their offer and sale of Investment in this State, Respondents represented to potential Investors that silver would be purchased on behalf of Investors.
21. In connection with their offer and sale of the Investment in this State, Respondents maintained one or more silver bars which they allowed potential Investors to see and/or hold; in connection with allowing the potential Investors to see and/or hold the silver, Respondents indicated to the potential Investors "this" (silver bars) is what would be purchased for the potential Investors if they invested.
22. As they touted the Investment, the Promoters represented to potential Investors that one or more accounts would be set up to hold the Investor's silver and that such accounts would be in the individual Investor's name.
23. With the exception of four (4) Investors whose IRA Custodian demanded custody of physical silver purchased for its clients' IRA accounts, no evidence has been provided that silver was placed in the account of any individual Investor, and all evidence provided indicates it was not.
24. In one or more instances, no silver was ever purchased with Investor funds.
25. Respondents Neily and PPE failed to conduct reasonable due diligence on the Investment.
26. Respondents Neily and PPE did not disclose to Investors their failure to conduct reasonable due diligence on the Investment.
27. In connection with their participation in the Investment, Respondents received commissions from Wilson and AB&C.

28. Between 2009 and 2012, Respondents Neily and PPE received over \$1,160,000 from Wilson and/or AB&C, both through payments directly to them and through the Smallwood Family Trust, from which Respondent Neily benefitted.
29. Respondents did not disclose their receipt of commissions to one or more Investors.
30. On or around November 15, 2011, Neily was interviewed by Division staff concerning her and PPE's involvement with Wilson, AB&C and the Investment.
31. During the interview referenced in paragraph 30, Neily made statements which were false or misleading in a material respect, and also made omissions which, in connection with the circumstances under which they were made, were false or misleading in a material respect.
32. The misrepresentations and omissions referred to in paragraph 31 include but are not limited to, misrepresentations and omissions concerning the Investment, the scope of Neily and PPE's participation in the Investment, the extent to which Neily, acting on her own behalf and as an agent of PPE, solicited Investors, the amount of due diligence Neily and/or PPE did regarding the Investment, Neily's relationship with Wilson, Neily's and PPE's relationship with AB&C, and the amount of financial compensation received from Wilson and/or AB&C.

**FOR A FIRST CAUSE OF ACTION
AS TO RESPONDENT NEILY**

**VIOLATION OF S.C. CODE § 35-1-301
(Registration Requirements in Connection with the Offer or Sale of Securities)**

33. The Division incorporates the allegations of paragraphs 1-32 and realleges them as if set forth verbatim herein.

34. Respondent Neily, acting jointly, severally, and in concert with others, offered for sale and sold securities in this State and from this State which were not registered under the Act, exempt from registration, or federal covered securities.
35. Respondent Neily's conduct violated Section 35-1-301 of the Act.

**FOR A SECOND CAUSE OF ACTION
AS TO RESPONDENT NEILY**

**VIOLATION OF S.C. CODE § 35-1-402
(Agent Registration in Connection with the Offer or Sale of Securities)**

36. The Division incorporates the allegations of paragraphs 1-35 and realleges them as if set forth verbatim herein.
37. Respondent Neily, acting jointly, severally, and in concert with others, transacted securities business in and from the State of South Carolina when Respondent Neily was not registered as an agent under the Act or exempt from registration.
38. Respondent Neily's conduct violated Section 35-1-402 of the Act.

**FOR A THIRD CAUSE OF ACTION
AS TO RESPONDENT NEILY**

**VIOLATION OF S.C. CODE § 35-1-501
(Fraud in Connection with the Offer or Sale of Securities)**

39. The Division incorporates the allegations of paragraphs 1-38 and realleges them as if set forth verbatim herein.
40. In connection with the offer or sale of securities in or from South Carolina, Respondent Neily, directly or indirectly (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material facts or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were

made, not misleading; and (iii) engaged in acts, practices, or a course of business which operated as a fraud or deceit upon Investors.

41. Respondent Neily's conduct includes, but is not limited to, the following:

- a. Respondent Neily did not disclose to Investors that the securities she was offering for sale were not registered under the Act, exempt from registration, or federal covered securities and were being offered and sold in violation of Section 35-1-301 of the Act;
- b. Respondent Neily failed to disclose to one or more Investors that she was not registered to sell securities in this State and was acting in violation of Section 35-1-402 of the Act every time she solicited a potential Investor;
- c. Respondent Neily, did not disclose to one or more Investors that she had failed to conduct reasonable due diligence on the Investment;
- d. Respondent Neily, on one or more occasions, failed to tell the Investor involved that she received commissions from Wilson and/or AB&C for her activities regarding the Investment;
- e. Respondent Neily failed to disclose to one or more Investors that the funds she solicited from them to place with Wilson and AB&C would not be invested in the manner in which she represented they would be invested;
- f. Respondent Neily made false and misleading statements to one or more Investors in an effort to secure additional investments;
- g. Respondent Neily, on one or more occasions, gave investment advice while failing to tell Investors she was not registered as an investment adviser representative; and

h. Respondent Neily, on one or more occasions, provided false and misleading investment advice to Investors.

42. This conduct violated Section 35-1-501 of the Act.

**FOR A FOURTH CAUSE OF ACTION
AS TO RESPONDENT NEILY**

**VIOLATION OF S.C. CODE § 35-1-505
(Making of False or Misleading Statements in Proceedings under the Act)**

43. The Division incorporates the allegations of paragraphs 1-42 and realleges them as if set forth verbatim herein.

44. In connection with a record that was created as part of an investigation pursuant to Section 35-1-602 of the Act, Neily made one or more statements that, at the time and in light of the circumstances under which it was made, was false or misleading in a material respect, or, in connection with one or more statements, omitted to state one or more material facts necessary to make the statements made, in the light of the circumstances under which they were made, not false or misleading.

45. This conduct violated Section 35-1-505 of the Act.

**FOR A FIFTH CAUSE OF ACTION
AS TO RESPONDENT PPE**

**VIOLATION OF S.C. CODE § 35-1-301
(Registration Requirements in Connection with the Offer or Sale of Securities)**

46. The Division incorporates the allegations of paragraphs 1-45 and realleges them as if set forth verbatim herein.

47. Respondent PPE, acting through its agent Neily, offered for sale and sold securities in this State and from this State which were not registered under the Act, exempt from registration, or federal covered securities.

48. Respondent PPE's conduct violated Section 35-1-301 of the Act.

**FOR A SIXTH CAUSE OF ACTION
AS TO RESPONDENT PPE**

**VIOLATION OF S.C. CODE § 35-1-402
(Agent Registration in Connection with the Offer or Sale of Securities)**

49. The Division incorporates the allegations of paragraphs 1-48 and realleges them as if set forth verbatim herein.
50. Respondent PPE, acting through its agent Neily, transacted securities business in and from the State of South Carolina, when Respondent PPE was not registered as an agent under the Act or exempt from registration.
51. Respondent PPE's conduct violated Section 35-1-402 of the Act.

**FOR A SEVENTH CAUSE OF ACTION
AS TO RESPONDENT PPE**

**VIOLATION OF S.C. CODE § 35-1-501
(Fraud in Connection with the Offer or Sale of Securities)**

52. The Division incorporates the allegations of paragraphs 1-51 and realleges them as if set forth verbatim herein.
53. In connection with the offer or sale of securities in or from South Carolina, Respondent PPE, acting through its agent Neily, directly or indirectly (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material facts or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaged in acts, practices, or a course of business which operated as a fraud or deceit upon investors.
54. Respondent PPE's conduct includes, but is not limited to, the following:

- a. Respondent PPE did not disclose to Investors that the securities it offered for sale were not registered under the Act, exempt from registration, or federal covered securities and were being offered and sold in violation of Section 35-1-301 of the Act;
- b. Respondent PPE failed to disclose to one or more Investors that it was not registered to sell securities in this State and was acting in violation of Section 35-1-402 of the Act every time it solicited a potential Investor;
- c. Respondent PPE did not disclose to one or more Investors that it had failed to conduct reasonable due diligence on the Investment;
- d. Respondent PPE failed to disclose to one or more Investors that the funds it solicited from them to place with Wilson and AB&C would not be invested in the manner in which it represented they would be;
- e. Respondent PPE made false and misleading statements to one or more Investors in an effort to secure additional investments;
- f. Respondent PPE, on one or more occasions, gave investment advice while failing to tell Investors that it was not registered to legally do so; and
- g. Respondent PPE, on one or more occasions, provided false and misleading investment advice to Investors.

55. This conduct violated Section 35-1-501 of the Act.

PRAYER FOR RELIEF

WHEREFORE, the Division prays that the Commissioner issue an Order granting the following relief:

- A. Ordering both Respondents to permanently cease and desist from violating the Act;

- B. Ordering disgorgement by both Respondents of all ill-gotten gains obtained in connection with the offers and sales of the Investment;
- C. Imposing civil penalties on each Respondent in the amount of ten thousand (\$10,000.00) dollars per violation for each violation of the Act;
- D. Temporarily and Permanently barring each Respondent from conducting securities business in the State of South Carolina;
- E. Temporarily and Permanently enjoining each Respondent from liquidating, moving, or otherwise disposing of any and all assets of the affected Investors, wherever such assets may be situated;
- F. Any and all other Temporary or Permanent Injunctive relief as may be directed by the Commissioner; and
- G. For such other and further relief as may be just and proper under the circumstances.

FOR THE DIVISION

BY: Tracy Meyers

TRACY A. MEYERS
Assistant Deputy Attorney General

ADAM L. WHITSETT
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-4731

Columbia, South Carolina
October 29, 2012